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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,519	01/08/2004	Randall Lane Grimm	ROC920030317US1	9852
46296 7590 10/17/2008 MARTIN & ASSOCIATES, LLC P.O. BOX 548 CARTHAGE, MO 64836-0548				
EXAMINER				
CARDENAS NAVIA, JAIME F				
ART UNIT		PAPER NUMBER		
3624				
MAIL DATE		DELIVERY MODE		
10/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/753,519

**Applicant(s)**

GRIMM ET AL.

**Examiner**

Jaime Cardenas-Navia

**Art Unit**

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/309)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Introduction*

1. This **FINAL** office action is in response to communications received on June 19, 2008. Claims 7, 8, 10, and 11 have been amended. Claims 1-6 and 13-22 have been cancelled. Claims 7-12 are pending.

### *Response to Amendment*

2. Applicant's amendments to the claims are **sufficient to overcome all the 35 U.S.C. § 112, second paragraph, rejections** as set forth in the previous office action.
3. Applicant's amendments to the claims are **sufficient to overcome the 35 U.S.C. § 101 rejections** set forth in the previous office action.

***Response to Arguments***

4. Applicant's arguments have been fully considered by the Examiner. In particular, Applicant argues that (1) Wyman does not teach or suggest a method for providing metered capacity of hardware resources.

**Regarding argument (1)**, Applicant's argument has been considered but is moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 7-12 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Wyman (US 5,745,879) in view of Donovan et al. (US 6,012,032).

**Regarding claim 7**, Wyman teaches a computer-implemented method for providing metered accounting of at least one resource on demand (Abstract), the method comprising the steps of:

determining when a selected resource is required (col. 6, lines 24-38);

when the selected resource is required (col. 6, lines 24-38), determining whether unused billed capacity for a same type of resource as the resource is available (col. 10, lines 8-19, col. 14, lines 20-42, units are unused billed capacity for the same type of resource); and

if unused billed capacity for the same type of resource is available, assigning the unused billed capacity of the same type of resource to the selected resource (col. 10, lines 8-19, col. 14, lines 20-42, units are unused billed capacity for the same type of resource).

Wyman does not teach wherein the selected resource is a hardware resource.

Donovan teaches providing metered capacity of at least one hardware resource (col. 1, lines 58-67).

The inventions of Wyman and Donovan pertain to providing metered capacity of resources. All the claimed elements were known in the prior art and one skilled in the art could

have combined the elements as claimed by known methods with no change in their respective functions, as Donovan does not teach away from or contradict Wyman, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention as the algorithms used for monitoring resources work independently of what the actual resource is. Thus, it would have been obvious to combine the teachings, motivated by the need to monitor hardware resources rather than software resources.

**Regarding claim 8**, Wyman teaches billing a predetermined resource-time for the selected resource if no unused paid capacity for the same type of resource is available (col. 14, lines 31-42, if there are no more units available, then the license holder is required to pay for the additional use).

Wyman does not teach wherein the selected resource is a hardware resource.

Donovan teaches providing metered capacity of at least one hardware resource (col. 1, lines 58-67).

The inventions of Wyman and Donovan pertain to providing metered capacity of resources. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Donovan does not teach away from or contradict Wyman, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention as the algorithms used for monitoring resources work

independently of what the actual resource is. Thus, it would have been obvious to combine the teachings, motivated by the need to monitor hardware resources rather than software resources.

**Regarding claim 9**, Wyman teaches deducting the billed predetermined resource-time from a prepaid amount (col. 14, lines 20-42, units are a prepaid amount, the billed predetermined resource-time is deducted from this).

**Regarding claim 10**, Wyman teaches determining whether the selected resource has already been billed (col. 12, lines 45-49, col. 14, lines 30-42, units, which have already been billed, are tracked, and accounting for all resource use is tracked and managed by the license manager for billing purposes).

Wyman does not teach wherein the selected resource is a hardware resource.

Donovan teaches providing metered capacity of at least one hardware resource (col. 1, lines 58-67).

The inventions of Wyman and Donovan pertain to providing metered capacity of resources. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Donovan does not teach away from or contradict Wyman, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention as the algorithms used for monitoring resources work independently of what the actual resource is. Thus, it would have been obvious to combine the teachings, motivated by the need to monitor hardware resources rather than software resources.

**Regarding claim 11**, Wyman teaches a computer-implemented method for providing metered capacity of at least one resource on demand (Abstract), the method comprising the steps of:

determining when the selected resource is required (col. 6, lines 24-38);

determining whether the selected resource has already been billed (col. 12, lines 45-49, col. 14, lines 30-42, units, which have already been billed, are tracked, and accounting for all resource use is tracked and managed by the license manager for billing purposes);

if the selected resource has not already been billed, determining whether unused billed capacity for a same type of resource as the selected resource is available (col. 10, lines 8-19, col. 14, lines 20-42, units are unused billed capacity for the same type of resource);

if unused billed capacity for the same type of resource is available, assigning the unused billed capacity of the same type of resource to the selected resource (col. 10, lines 8-19, col. 14, lines 20-42, units are unused billed capacity for the same type of resource); and

if unused billed capacity for the same type of resource is not available, billing a predetermined resource-time for the selected resource (col. 14, lines 31-42, if there are no more units available, then the license holder is required to pay for the additional use).

Wyman does not teach wherein the selected resource is a hardware resource.

Donovan teaches providing metered capacity of at least one hardware resource (col. 1, lines 58-67).

The inventions of Wyman and Donovan pertain to providing metered capacity of resources. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective



functions, as Donovan does not teach away from or contradict Wyman, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention as the algorithms used for monitoring resources work independently of what the actual resource is. Thus, it would have been obvious to combine the teachings, motivated by the need to monitor hardware resources rather than software resources.

**Regarding claim 12**, Wyman teaches deducting the billed predetermined resource-time from a prepaid amount (col. 14, lines 20-42, units are a prepaid amount, the billed predetermined resource-time is deducted from this).

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Tokunaga (US 2001/0025249 A1) teaches a program capable of monitoring both hardware and software resources.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 14, 2008

/J. C./  
Examiner, Art Unit 3624

/Bradley B Bayat/  
Supervisory Patent Examiner, Art Unit 3624